

an authorized rate of return, today set at 11.25 percent.¹⁷⁷ If the rates are deemed lawful when filed,¹⁷⁸ LECs do not have to refund any overearnings.¹⁷⁹ Otherwise, overall interstate earnings above 11.25 percent for all access categories, plus a fixed increment of 25 basis points, are subject to refund.¹⁸⁰ Thus, because of the cost-plus nature of rate-of-return regulation, rate-of-return carriers are generally unable to retain permanently the benefits from any efficiencies that they may create during the two years in which a tariff is in effect. Efficiencies realized because of increased demand or lowered costs are used in developing rates for the subsequent two-year tariff period, which adjusts future rates so that the rate-of-return carrier's revised tariff rates will be set to produce an 11.25 percent rate of return for the future tariff period.

71 In 1991, the Commission established a price cap regulatory structure that applied to the BOCs and GTE on a mandatory basis. Other LECs could elect to participate in the price cap program, and several have. Under price cap regulation, carriers' access charges were limited by price indexes that were adjusted annually by an X-Factor, which, in the original price cap plan, reduced the price cap indexes to reflect price cap carrier productivity gains above those reflected in the gross domestic product - price index (GDP-PI). Price cap carrier customers received some of the benefits of increased efficiencies that the carrier achieves.¹⁸¹ Our price cap rules also provided for price cap indexes to be adjusted upwards, implementing a low-end adjustment, if a price cap carrier earned returns below a specified level in a given year. Moreover, a price cap carrier was allowed to petition the Commission to set its rates above the levels permitted by the price cap indexes based on a showing that the authorized rate levels would produce earnings that are so low as to be confiscatory. Until 1997, price cap carriers were required to "share," or return to ratepayers, earnings above specified levels.¹⁸²

¹⁷⁷ *Id.* at 19701-02, paras. 208-10.

¹⁷⁸ 47 U.S.C. § 204(a)(3). See *ACS of Anchorage, Inc. v. FCC*, 290 F.3d 403 (D.C. Cir. 2002).

¹⁷⁹ Rates are deemed lawful pursuant to section 204(a)(3) if they are not suspended before becoming effective. The majority of filed tariff rates are not suspended and therefore are deemed lawful.

¹⁸⁰ 47 C.F.R. § 65.700(b).

¹⁸¹ The price cap regulations also give price cap carriers greater flexibility in determining the amount of revenues that may be recovered from a given access service. The price cap rules group services together into different baskets, service categories, and service subcategories. The rules then identify the total permitted revenues for each basket or category of services. Within these baskets or categories, price cap carriers are given some discretion to determine the portion of revenue that may be recovered from specific services. Subject to certain restrictions, this flexibility allows price cap carriers to alter the access charge rate level associated with a given service. For example, within the category of switching services, a price cap carrier may choose to recover a greater portion of its switching revenues through access charges assessed to one kind of switching service rather than through charges assessed to another switching service. Although the LEC must still observe the switched-access rate structure that is set forth in Part 69 of our rules (which determines what services may be offered and whether charges may be imposed on a per-minute or flat-rated basis), the rate level of the access charge will vary depending on the amount of revenues that the price cap carrier chooses to recover from a given service.

¹⁸² *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Fourth Report and Order, CC Docket No. 96-262, Second Report and Order, 12 FCC Rcd 16642, 16700 (1997), *aff'd in part, rev'd in part*, *USTA v. FCC*, 188 F.3d 521 (D.C. Cir. 1999).

72 The Commission replaced the original price cap structure with the CALLS plan in 2000. Under the CALLS plan, carriers' access charges are limited by price indexes that are adjusted annually by an X-Factor, which now serves as a transitional mechanism for moving rates to target levels. The plan established three target levels for traffic-sensitive access rates.¹⁸³ In addition, under the terms of the *Pricing Flexibility Order*, an eligible price cap carrier that elects to price access services using the Commission's pricing flexibility rules forgoes its right to an automatic low-end adjustment.

73 In the *MAG Further Notice*, we sought comment on several parameters that might be included in an alternative regulation plan. The Commission noted that a properly designed alternative regulatory approach will, over time, drive rates toward forward-looking costs and prepare regulated companies for competing in a deregulated market. In addition, an alternative regulatory mechanism may offer rate-of-return carriers a degree of pricing flexibility and the opportunity to share in the profits from the cost reductions they will make to prepare for competitive entry, while also sharing some of those savings with consumers. The Commission noted three principles: (1) rates must be just and reasonable, as required by section 201(b) of the Act,¹⁸⁴ (2) adequate investment or service quality levels must be maintained;¹⁸⁵ and (3) administrative burdens on carriers should be minimized.¹⁸⁶ Finally, the Commission asked a variety of questions on specific issues relating to the development of an alternative regulatory plan. These inquiries included (1) the extent to which a plan should be optional;¹⁸⁷ (2) the appropriateness of including a carrier electing an alternative regulation plan in the NECA pooling process,¹⁸⁸ (3) the baseline on which an incentive plan should be based, e.g., on revenue per line (RPL) or some other measure,¹⁸⁹ (4) the extent to which a plan should provide for a productivity offset or contain a sharing mechanism,¹⁹⁰ (5) the possibility of modifying the CALLS plan to permit rate-of-return carriers to adopt that structure,¹⁹¹ and (6) the need for additional reporting or other monitoring steps.¹⁹²

¹⁸³ See 47 C.F.R. § 61.3(qq).

¹⁸⁴ 47 U.S.C. § 201(b), *MAG Further Notice*, 16 FCC Rcd at 19706, para. 221.

¹⁸⁵ *MAG Further Notice*, 16 FCC Rcd at 19706, para. 223.

¹⁸⁶ *Id.* at 19707, para. 225.

¹⁸⁷ *Id.* at 19707, para. 227.

¹⁸⁸ *Id.* at 19708, para. 228.

¹⁸⁹ *Id.* at 19708-09, paras. 229-32.

¹⁹⁰ *Id.* at 19709-10, paras. 234-37. The Commission also inquired about whether a system of regulating with a lag might be considered. Under such an approach, an initial productivity factor would be selected and, at subsequent periods, such as every three years, the productivity factor would be revised based on the preceding periods actual performance. *Id.*

¹⁹¹ *Id.* at 19709, para. 233.

¹⁹² *Id.* at 19711, para. 239.

74 Several parties indicated that benefits would flow from the adoption of an alternative regulatory plan. For example, NRTA states that an optional plan will modernize regulation where incentive regulation can benefit consumers, as well as carriers, without jeopardizing the Act's commitment to comparable rural and urban services and prices and to the availability of evolving telecommunications capabilities in rural areas.¹⁹³ ALLTEL argues that rate-of-return regulation limits a LEC's potential earnings (and thus the amount of capital available for investment) and limits a LEC's ability to respond to bundled and discounted competitive offerings.¹⁹⁴ They submit that the Commission should build incentives into its regulation that encourage LECs to pursue the goals of investment, service quality, and advanced services independently.¹⁹⁵ Parties differed widely, however, in the features that they believed a reasonable alternative regulatory plan should include.

75 Rate-of-return carriers generally argue that any alternative regulation plan should be optional and, given the operational variations among rate-of-return carriers, should permit a rate-of-return carrier to elect coverage by study area.¹⁹⁶ ALLTEL states that because of the all-or-nothing rule, rate-of-return carriers serving rural areas cannot make the transition to price caps, even though price cap regulation might work for some study areas.¹⁹⁷ Other parties, including IXCs, on the other hand, argue that any alternative regulation plan should be mandatory for larger rate-of-return carrier holding companies because they possess the size necessary to benefit from any incentives offered in an alternative regulation plan.¹⁹⁸ These parties argue that if an alternative regulation plan were optional, a rate-of-return carrier could opt in at a cyclical cost peak or otherwise gold-plate their cost structure before electing an alternative plan. CUSC argues that all vestiges of revenue guarantees for rate-of-return carriers must be eliminated by expeditiously transitioning rate-of-return carriers to incentive regulation in order to avoid creating powerful incentives for inefficiency.¹⁹⁹

¹⁹³ NRTA Comments at 7.

¹⁹⁴ ALLTEL Comments at 19-20.

¹⁹⁵ *Id.* at 39.

¹⁹⁶ See, e.g., ALLTEL Comments at 5, GVNW Comments at 2-4, ICORE Comments at 11-13, ITTA Comments at 6-7, NRTA Comments at 4-7 (rate-of-return carriers have less opportunity to achieve lower costs due to their limited size, their lumpy investment patterns, and the fluctuating operating expenses), NTCA Comments at 2-3, Nebraska Rural Carriers Comments at 2-3, Telecom Consulting Assoc. Comments at 2-3 (should not be tied to levels of competition, but should be permitted if an ETC has been designated), Ronan and Hot Springs Comments at 5, Western Alliance Comments at 5-6.

¹⁹⁷ ALLTEL Comments at 8.

¹⁹⁸ See, e.g., AT&T Comments at 13-15 (above 50,000 lines), Nebraska Rural Carriers Comments at 3 (optional below 100,000 lines), Sprint Comments at 4 (mandatory for all rate-of-return carriers), WorldCom Comments at 3 (above 200,000 lines), GCI Reply at 2 (above 50,000 lines).

¹⁹⁹ CUSC Comments at 3.

76 Several parties argue that a productivity factor must be part of any alternative regulation plan to ensure that consumers, not just the carriers, benefit from the plan.²⁰⁰ AT&T, GCI, and Sprint submit that productivity for local switching and transport will be higher than that for the common line category.²⁰¹ Rate-of-return carriers, on the other hand, strenuously oppose the inclusion of a productivity factor in any plan.²⁰² Some of these rate-of-return carrier interests also oppose any up-front productivity dividend.²⁰³ Several parties support the adoption of a sharing mechanism, despite its incentive-suppressing effects, and some would establish two productivity factors with different sharing requirements.²⁰⁴ Several parties support a low-end adjustment to preclude any confiscatory takings that might otherwise occur,²⁰⁵ although AT&T opposes such a provision unless sharing is required.²⁰⁶

77 AT&T and GCI support the use of RPL²⁰⁷ as the baseline for establishing an incentive structure for common line services.²⁰⁸ ICORE submits that rate-of-return carriers with stable costs and reasonable access line growth rates may benefit from using RPL, but RPL will not work for small carriers with volatile costs, sporadic line growth, and acute sensitivity to external events.²⁰⁹ GSA argues that the Commission must monitor service quality performance and should not rely on other regulatory bodies for that purpose.²¹⁰

²⁰⁰ See, e.g., AT&T Comments at 8-12, GCI Comments at 4-10, GSA Comments at 5-7, WorldCom Comments at 3-4.

²⁰¹ AT&T Comments at 6, GCI Comments at 8-10, Sprint Comments at 4.

²⁰² See, e.g., GVNW Comments at 4-5 (problematic to establish a productivity factor given the small size of rate-of-return carriers, special attention should be given to LECs with fewer than 50,000 lines if a productivity factor is to be adopted), Ronan and Hot Springs Comments at 1-5, Western Alliance Comments at 7.

²⁰³ See, e.g., Ronan and Hot Springs Comments at 5.

²⁰⁴ See, e.g., AT&T Comments at 11-12, Sprint Comments at 3 (a higher X-Factor would return more of productivity gains to the consumers annually, thereby permitting a LEC to earn more before being required to share any increased profits), WorldCom at 3-4.

²⁰⁵ See, e.g., ALLTEL Comments at 45-46, Ronan and Hot Springs Comments at 5, Sprint Comments at 3.

²⁰⁶ See, e.g., AT&T Comments at 11-12.

²⁰⁷ Under an RPL approach, a rate-of-return carrier would determine its total revenues from, for example, the common line category, and divide that by the number of lines to obtain a revenue per line amount. This RPL would become the base that would be used to establish future revenue levels. The RPL level could be adjusted by growth and productivity factors, depending on the terms of an alternative regulation plan that might be adopted.

²⁰⁸ AT&T Comments at 4-6, GCI Comments at 10.

²⁰⁹ ICORE Comments at 11-12.

²¹⁰ GSA Comments at 9-11.

78. Several parties argued that a rate-of-return carrier electing an alternative regulation plan should be required to leave the NECA pools²¹¹ because incentive regulation, which would require carriers to take certain risks to obtain certain rewards, is inconsistent with the risk sharing effect of pooling.²¹² GCI asserts that a rate-of-return carrier must be required to file a tariff that is supported by a cost study before going into incentive regulation.²¹³ Many rate-of-return carriers, however, argue that a rate-of-return carrier choosing alternative regulation should be allowed to continue in the NECA pools, because they believe that the pooling procedures can be modified to accommodate an incentive regulation plan.²¹⁴ NECA states that accommodating incentive regulation within its existing pooling arrangements would require a settlement mechanism that would distribute access charge revenues to participating companies on a formula basis, similar to what is done for average schedule settlements.²¹⁵ If targeted rates were included as part of an alternative regulation plan, NECA would apply existing rate banding methodologies to incentive companies based on incentive formula characteristics.²¹⁶ AT&T argues that average schedule companies should not be allowed to elect an alternative regulation plan.²¹⁷

79. Subsequent to the close of the record, two alternative regulation plans were filed with the Commission. CenturyTel filed what is essentially a modified CALLS plan. ALLTEL, Madison River, and TDS filed a plan, called the Rate-of-Return Carrier Tariff Option, that would expand the availability of the tariff filing option in section 61.39²¹⁸ that is currently available only

²¹¹ NECA operates two pools: the common line pool and the traffic-sensitive pool, the latter including local switching, transport, and special access. Pooling carriers charge rates set by NECA that are based on the costs of those carriers that participate in the pool or, in the case of banded rates, the costs of those carriers falling within the particular band. For a particular tariff, participating LECs pool their interstate access revenues from services offered pursuant to that tariff. Rate-of-return carriers recover their costs from the pools, including a return on investment that is equal for all participating rate-of-return carriers in the pool. This recovery of all costs plus an equal return for all rate-of-return carriers provides the risk sharing feature of the pooling process.

²¹² See, e.g., AT&T Comments at 6-7.

²¹³ GCI Comments at 5-7.

²¹⁴ See, e.g., NRTA Comments at 17, NTCA Comments at 4.

²¹⁵ Rather than settling with the NECA pool on the basis of its own costs, an average schedule company receives settlements from the NECA pool based on a formula, called the average schedule, that is developed based on a study of the costs of comparable cost companies.

²¹⁶ NECA Comments at 8.

²¹⁷ AT&T Comments at 7.

²¹⁸ 47 C.F.R. § 61.39. This section allows a rate-of-return carrier with 50,000 lines or fewer to file tariffs every two years based on its demand and cost data from the previous two years to develop its rates for the subsequent two-year tariff period. These small rate-of-return carriers are not required to file the cost-support materials required by section 61.38 with their tariff filing, 47 C.F.R. § 61.38.

to carriers with 50,000 or fewer access lines.²¹⁹ These plans are described in the following section and attached in Appendices C and D

2. Alternative Regulation Proposals

80 *CenturyTel Proposal* CenturyTel proposes a five-year plan that would modify the Commission's price cap rules to permit rate-of-return carriers to elect a modified form of price cap regulation on a study area basis. The plan would eliminate the all-or-nothing rules contained in section 61.41(c)(2) and (3) so that rate-of-return carriers that acquire price cap exchanges need not convert to price caps at the holding company level.²²⁰ CenturyTel also proposes that the Commission eliminate section 61.41(b) so that rate-of-return carriers can elect price cap regulation on a study area basis.

81 Under CenturyTel's proposal, average traffic-sensitive (ATS) target rates would be established. These target traffic-sensitive rates in electing study areas would depend on line density at the holding company level, excluding lines acquired from mandatory price cap carriers. The plan would set the target rates at the lesser of: (1) \$0.0125 per minute, or the actual rate for carriers with a line density of less than 15 lines per square mile, or (2) \$0.0095 per minute, or the actual rate for carriers with a line density of at least 15, but less than 19, lines per square mile, or (3) the current levels up to a maximum ATS rate of \$0.0095 per minute for carriers with a line density higher than 19 lines per square mile for carriers newly electing the plan.²²¹ CenturyTel would have the Commission set the productivity factor, or X-Factor, at GDP-PI for carriers electing price caps under this plan.²²² The plan would contain a low-end adjustment set at 10.25 percent to ensure reasonable earnings opportunities. Finally, the CenturyTel plan would permit a rate-of-return carrier to elect price caps for some study areas and remove those study areas from the NECA pools, while leaving its other study areas in the NECA pools subject to rate-of-return regulation.²²³ CenturyTel proposes that rate-of-return carriers be able to choose alternative regulation at any annual or semi-annual tariff filing to be effective for the remainder of the five-year plan.²²⁴

82 CenturyTel's plan would permit an electing rate-of-return carrier to move its rate to a target rate on a revenue-neutral basis by allowing a rate-of-return carrier to recover the difference between the target rate and its existing revenue requirement through an ATS additive to ICLS; the plan would freeze the ATS additive on a study area basis for the duration of the

²¹⁹ See generally Kraskin letter.

²²⁰ CenturyTel Proposal at 1.

²²¹ *Id.* at 2.

²²² *Id.* This has the effect of freezing all rates at the target levels.

²²³ *Id.* at 4.

²²⁴ *Id.* at 6.

plan²²⁵. The plan would also freeze ICLS and LTS on a per-line basis for electing carriers for the plan's duration,²²⁶ as well as freezing LSS on a study area basis for the plan's duration²²⁷. The \$650 million fund of interstate CALLS support would not be available to the new price cap carriers²²⁸. High-cost loop support would be frozen on a per-line basis, subject to adjustment for GDP-CPI²²⁹.

83 *Rate-of-Return Carrier Tariff Option.* The Rate-of-Return Carrier Tariff Option would extend the current section 61.39 small carrier tariff option to all rate-of-return carriers, not just those serving 50,000 or fewer lines²³⁰. Under this option, electing rate-of-return carriers would file tariffs for a two-year period, with rates based on historical costs and demand. Initial traffic-sensitive rates would be established using costs and demand for the previous calendar year, while rates for succeeding tariff periods would be based on the actual costs and demand of the two preceding years. Thus, efficiencies achieved during the two-year tariff period would not be reflected in the form of rates until the next two-year tariff period.²³¹ Electing rate-of-return carriers would develop SLCs and other end user charges based on historical costs, just as they do for traffic-sensitive charges.

84 The Rate-of-Return Carrier Tariff Option would initially establish per-line, common line support at the historical level of costs recovered through universal service divided by the historical level of access lines²³². Specifically, the historical interstate common line revenue requirement, including line port and TIC reallocations, would be reduced by SLC revenues, the Special Access Surcharge, the Line Port Costs in Excess of Basic Analog Service, and universal service funding assessments recovered from end users²³³. The proposal would reassess the level of support every two years, based on the cost and demand levels during the

²²⁵ *Id.* at 3. More specifically, CenturyTel proposes that the Commission amend section 54.901 so that if an electing carrier's existing ATS rate is above the target rate, the carrier can recover the difference between the target rate and its existing revenue requirement through a "TS Additive" to ICLS. *Id.* In addition, CenturyTel proposes, the "TS Additive" would be frozen on a study area basis for the duration of its plan. *Id.*

²²⁶ *Id.* CenturyTel would clarify section 54.902 to make clear that ICLS support will follow transferred exchanges, and LTS will continue to be available when a buyer elects the new price caps. *Id.*

²²⁷ *Id.* CenturyTel proposes this revision as an amendment to section 54.301(a).

²²⁸ *Id.* CenturyTel proposes this revision as a redefinition of "price cap carrier," for the purposes of Part 54, Subpart J, in section 54.800.

²²⁹ *Id.* CenturyTel proposes these revisions as amendments to sections 36.631 and 36.603. The rural growth factor would continue to apply to the portion of the high-cost fund that supports other rural LECs. All rural LECs would remain eligible to receive safety net and safety valve support. *Id.*

²³⁰ ALLTEL Proposal at 3.

²³¹ *Id.* at 4.

²³² *Id.* at 5.

²³³ *Id.*

previous two-year period.²³⁴ Finally, the proposal would not alter the manner in which LSS and high-cost loop support is calculated or obtained

3. Discussion

85 With this further notice, we are taking a more focused look at the issues surrounding alternative regulation plans for rate-of-return carriers based on the two proposals presented to the Commission. In conjunction with that review, we will address the issues surrounding the retention or modification of the all-or-nothing rule as it relates to the ability of rate-of-return carriers to elect to adopt an alternative regulation plan for only some of its study areas.²³⁵ We build upon the record of the earlier notice as we proceed with our evaluation of alternative regulation opportunities and the all-or-nothing rule.

86 The two plans are each premised on a carrier's ability to elect alternative regulation on a study area basis, rather than on a holding company level, and are thus dependent on modification of the all-or-nothing rule. We tentatively conclude that any alternative regulation plan we adopt will be optional on the part of the rate-of-return carrier and will permit a rate-of-return carrier to elect participation in the alternative plan by study area. Our experience over the years in attempting to develop incentive regulation for smaller companies has led us to the view that it would not be possible to devise a plan suitable for mandatory imposition on all rate-of-return carriers. Likewise, it appears that most rate-of-return holding company groups are composed of very diverse operating companies, and that such companies will not be able to elect incentive regulation if they must do it on an "all-or-nothing" basis. We seek comment on these tentative conclusions, but we also ask that parties evaluate the plans as though they were going to be implemented on a study-area basis.

87 We invite parties to comment on the two alternative regulation proposals in the record. We ask parties to indicate whether one, both, or neither of the plans should be available. Parties may propose modifications to the two proposals. In doing so, they should be guided by the general inquiries that the Commission made in the *MAG Further Notice* with respect to the evaluation of both alternative plans and the modification of the all-or-nothing rule.²³⁶ We highlight some of these issues below. We also ask parties to address the implications of CenturyTel's proposed five-year time frame on the resolution of long-term access issues raised in the intercarrier compensation proceeding.²³⁷

²³⁴ *Id.*

²³⁵ The *MAG Further Notice* did not address whether price cap carriers that voluntarily elected price cap regulation should be allowed to remove one or more study areas from price cap regulation and return them to rate-of-return regulation or any alternative regulation plan adopted pursuant to the *MAG Further Notice*. We similarly limit this further notice to rate-of-return carrier election under the all-or-nothing rule, despite Valor's argument that price cap carriers in CALLS should be able to elect any alternative regulation plan adopted if that form of regulation is better suited to the needs of the carrier. Valor Reply at 8-9.

²³⁶ See generally *MAG Further Notice*, 16 FCC Rcd at 19703-11, paras. 213-240, 19717-24, paras. 260-71.

²³⁷ See *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001).

88 The CenturyTel plan essentially freezes access rates by proposing a productivity factor equal to GDP-PI, while the Rate-of-Return Carrier Tariff Option would adjust rates every two years to reflect any efficiency gains. We invite parties to comment on whether these proposals would produce rates that would be just and reasonable, as required by section 201(b) of the Act,²³⁸ and not unreasonably discriminatory, as required by section 202(a) of the Act.²³⁹ Parties are asked to address whether the CenturyTel plan should contain a productivity factor other than GDP-PI. Parties proposing such productivity factors are asked to explain in detail how such factors can be accurately calculated for the diverse group of carriers currently subject to rate-of-return regulation.²⁴⁰ The use of GDP-PI would mean that lower traffic-sensitive rates resulting from traffic growth would no longer occur as they would under rate-of-return regulation. Parties should address whether, as an alternative approach to an X-Factor, a G-factor should be used.²⁴¹ A G-factor would adjust the rate cap for rates of traffic-sensitive services based on the rate of growth of the relevant traffic-sensitive measure, *e.g.*, minutes. If so, should it be set based on historical data, or based on projections for the next tariff period? Alternatively, should the CenturyTel plan include a sharing mechanism if a productivity factor higher than that proposed, or a G-factor, is not adopted? Parties should address the need for, and level of, a low-end adjustment factor and how its level should be set in relation to any productivity factor, G-factor, or sharing requirement that might be adopted. Finally, we invite parties to discuss the implications for the Commission's goals if CenturyTel were the only carrier to elect its proposed form of alternative regulation.

89 Parties are also invited to comment on the effect that each plan will have on the incentives of electing rate-of-return carriers to invest in, and maintain, their exchange access facilities and to ensure that service quality is not degraded. We ask parties to evaluate the differences between the two plans on this score and to address what additional steps, if any, would be necessary to ensure that service quality does not decline in the face of any incentive to increase profits. We also ask parties to address the effects that the option to elect by study area and at a time of the rate-of-return carrier's choosing would have on these investment and service quality considerations.

90 Parties should also address the universal service aspects of the two plans. To what extent is either the CenturyTel plan or the Rate-of-Return Carrier Tariff Option likely to increase the size of the universal service fund, and how would support levels change over time? What effect, if any, would adoption of either plan have on the overall sustainability of universal service? What incentives would be created if, as CenturyTel proposes, high-cost loop support is fixed on a per-line basis and grows by GDP-PI, without regard to investment in loop facilities? With respect to either proposal, commenters should provide a detailed explanation as to how support should be calculated and the administrative burdens entailed. Commenters should also address how the proposal would serve the principles of section 254 of the Act.

²³⁸ 47 U.S.C. § 201(b).

²³⁹ 47 U.S.C. § 202(a).

²⁴⁰ *MAG Further Notice*, 16 FCC Rcd at 19710, para. 235.

²⁴¹ *Pricing Flexibility Order*, 14 FCC Rcd at 14326, para. 207.

91 We tentatively conclude that the opportunity to elect alternative regulation on a study area basis should be available only to holding company groups in which all non-average *schedule companies file their own cost-based tariffs*. We are especially concerned about the ability of any NECA internal process, or formula, to insulate the remaining pool members from the risk that may be introduced by a carrier's adoption of an alternative regulation plan. It will also be important to consider the extent to which pool participation makes cost shifting more difficult to detect. Parties should also address what modifications in tariff cost support rules and/or reporting requirements would be necessary under two scenarios: (1) the Commission were to require holding companies electing alternative regulation to remove all study areas from the NECA pools, and (2) the Commission were to permit some or all study areas of rate-of-return carriers electing alternative regulation to participate in the NECA pools.

92 We tentatively conclude that existing accounting and regulatory processes should permit parties and the Commission to detect cost shifting by the rate-of-return carriers that file cost-based access tariffs. IXC's and competitors argue that the incentive for rate-of-return carriers to shift costs continues to exist and that existing processes are inadequate to check such cost shifting. We note, however, that this debate has been joined in very general terms, with little in the way of specific detail. We ask parties to identify the most significant means by which a rate-of-return carrier could shift costs from a study area electing an alternative regulation plan to a study area subject to rate-of-return regulation. Parties should also describe why existing procedures will, or will not, permit the cost shift to be identified and quantified. To the extent parties argue existing processes are inadequate, we invite them to identify with specificity what additional reporting or regulatory procedures would allow the parties and the Commission to identify and quantify cost shifts.

93. The debate over incentive regulation is often clouded by uncertainty as to whether the CALLS plan contemplated that additional study areas would enter that plan during its five-year term.²⁴² Three years have passed and no rate-of-return carrier has sought entry. To eliminate the uncertainty, we tentatively conclude that the CALLS plan was not designed to be open to new carriers or study areas. The CALLS plan began as a voluntarily negotiated agreement among price cap carriers and certain IXC's that addressed pricing and universal service concerns as a package, *without consideration of possible participation by carriers that were then under rate-of-return regulation*.²⁴³ That CALLS was not intended to accommodate additional entry is most clearly indicated by the fact that in adopting the plan, the Commission made no provision for how the universal service component of the CALLS plan would address future expansion to new carriers.²⁴⁴ We therefore believe the rules should be amended to clarify that new carriers or carrier study areas may not elect this plan. We invite parties to comment on this tentative conclusion.

²⁴² See letter from Karen Brinkmann, Esq., counsel for CenturyTel, to Marlene H. Dortch, Secretary, FCC, dated Dec. 23, 2002, Attachment 1 at 1.

²⁴³ See PRTC Comments at 2-5.

²⁴⁴ See *id.* at 7-9.

94. We also tentatively conclude that, whatever final rule we adopt with respect to the election of alternative regulation on a study area basis, that rule should also apply when carriers under different regulatory plans come together by merger or acquisition. This would include those cases in which a price cap carrier acquired a rate-of-return study area, but could not bring it into the CALLS plan, if we adopt our tentative conclusion in the previous paragraph. Thus, if we were to permit rate-of-return carriers to elect alternative regulation by study area, the current ALLTEL/Ahant, Verizon/PRTC, and Valor/Kerrville waivers of the all-or-nothing rule would no longer be necessary. Under this tentative conclusion, affected carriers would continue to receive universal service support through the preexisting support mechanism(s). We seek comment on this tentative conclusion. Parties opposing this approach should indicate how they would harmonize the interrelated considerations arising from mergers or acquisitions between carriers subject to different regulatory regimes.

V. PROCEDURAL MATTERS

A. *Ex Parte* Requirements

95. This proceeding will continue to be governed by "permit-but-disclose" *ex parte* procedures that are applicable to non-restricted proceedings under 47 C.F.R. § 1.1206. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. Interested parties are to file any written *ex parte* presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, S.W., TW-B204, Washington, D.C. 20554, and serve with one copy. Pricing Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554, Attn: Douglas Slotten. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, <qualexint@aol.com>.

B. Paperwork Reduction Act Analysis

96. The *Report and Order* herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the Federal Register of OMB approval.

97. The incorporated *Second Further Notice of Proposed Rulemaking (Second Further Notice)* contains either a proposed or modified information collection. As part of the continuing effort to reduce paperwork burdens, we invite the general public and the OMB to comment on the information collections contained in this *Second Further Notice*, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.* Public and agency comments are due at the same time as other comments on this *Second Further Notice*; OMB comments are due 60 days from the date of publication of this *Second Further Notice* in the Federal Register.

Comments should address (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility, (2) the accuracy of the Commission's burden estimates, (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

C. Final Regulatory Flexibility Act Analysis

98. The Regulatory Flexibility Act of 1980, as amended (RFA),²⁴⁵ requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."²⁴⁶ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."²⁴⁷ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.²⁴⁸ A "small business concern" is one which (1) is independently owned and operated; (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the Small Business Administration (SBA).²⁴⁹

99. As required by the RFA, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *MAG Further Notice*.²⁵⁰ The Commission sought written public comment on the proposals in the *MAG Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.²⁵¹ To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in the preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

²⁴⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

²⁴⁶ 5 U.S.C. § 605(b).

²⁴⁷ 5 U.S.C. § 601(6).

²⁴⁸ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

²⁴⁹ 15 U.S.C. § 632.

²⁵⁰ *MAG Further Notice*, 16 FCC Rcd at 19742-44, paras. 329-36.

²⁵¹ See 5 U.S.C. § 604.

1. Need for, and Objectives of, the Rules

100 In this Order, the Commission modifies its interstate access charge and universal service rules for LECs subject to rate-of-return regulation. The Order carefully considers the needs of small and mid-sized local telephone companies serving rural and high-cost areas, in order to help provide certainty and stability for such carriers, encourage investment in rural America, and provide important consumer benefits.

101 This Order addresses three of the issues raised in the *MAG Further Notice*. First, we modify the “all-or-nothing” rule to permit rate-of-return LECs to bring recently acquired price cap lines back to rate-of-return regulation. This will reduce the administrative burdens on small rate-of-return carriers of seeking a waiver of the all-or-nothing rule because it will permit acquired lines to be returned to rate-of-return regulation, and thereby will reduce the uncertainty associated with such acquisitions. Second, we grant rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations. This action increases the efficiency of the interstate access charge rate structure by moving rates towards cost. Finally, we merge Long Term Support (LTS) into the ICLS mechanism. This will promote administrative simplicity by eliminating an unnecessarily duplicative support mechanism without affecting the total support received by rate-of-return carriers, and without negatively affecting carriers that choose to participate in the NECA common line pool. Because LTS, but not ICLS, is conditioned on participation in the common line pool, the merger will permit each rate-of-return carrier the freedom to choose whether to set its own rates without sacrificing universal service support.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

102 No comments were filed in response to the IRFA. However, certain comments filed in response to the *MAG Further Notice* included concerns that would relate to small entities. Several commenters argued that by eliminating the all-or-nothing rule, small, typically rural carriers would experience reductions in both transaction costs and uncertainty. Some commenters also argued that relaxing the rules on volume and term discounts for transport services, together with allowing carriers to offer services pursuant to customer contracts, would cause harm to small entities by foreclosing competition. Finally, commenters argued that merging LTS into ICLS would diminish the viability of the common line pool, which provides benefits to the small, rural carriers that participate in it.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

103. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.²⁵² In this section, we further describe and estimate the number of small entity licensees and regulatees that may also be directly affected by rules adopted in this order. The most reliable

²⁵² 5 U.S.C. § 604(a)(3)

source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report.²⁵³ The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers,²⁵⁴ Paging,²⁵⁵ and Cellular and Other Wireless Telecommunications.²⁵⁶ Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

104 We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a wired telecommunications carrier having 1,500 or fewer employees), and “is not dominant in its field of operation.”²⁵⁷ The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.²⁵⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

105 *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁵⁹ According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year.²⁶⁰ Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of

²⁵³ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, Table 5.3 (August 2003) (*Trends in Telephone Service*).

²⁵⁴ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513310 (changed to 517110 in October 2002).

²⁵⁵ *Id.* § 121.201, NAICS code 513321 (changed to 517211 in October 2002).

²⁵⁶ *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

²⁵⁷ 5 U.S.C. § 601(3).

²⁵⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a), 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁵⁹ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

²⁶⁰ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513310 (issued October 2000).

1,000 employees or more²⁶¹ Thus, under this size standard, the majority of firms can be considered small

106 *Incumbent Local Exchange Carriers (LECs)* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶² According to Commission data,²⁶³ 1,337 carriers reported that they were engaged in the provision of local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein

107 *Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), and "Other Local Exchange Carriers"* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶⁴ According to Commission data,²⁶⁵ 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 companies, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees.²⁶⁶ In addition, 35 carriers reported that they were "Other Local Service Providers." Of the 35 "Other Local Service Providers," an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees.²⁶⁷ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

108 *Interexchange Carriers (IXCs)* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers.

²⁶¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is "Firms with 1,000 employees or more."

²⁶² 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002)

²⁶³ *Trends in Telephone Service* at Table 5.3

²⁶⁴ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002)

²⁶⁵ *Trends in Telephone Service* at Table 5.3

²⁶⁶ *Id.*

²⁶⁷ *Id.*

Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁶⁸ According to Commission data,²⁶⁹ 261 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 261 companies, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees.²⁷⁰ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the rules and policies adopted herein.

109 *Operator Service Providers (OSPs)* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷¹ According to Commission data,²⁷² 23 companies reported that they were engaged in the provision of operator services. Of these 23 companies, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees.²⁷³ Consequently, the Commission estimates that the majority of operator service providers are small entities that may be affected by the rules and policies adopted herein.

110 *Payphone Service Providers (PSPs)* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁷⁴ According to Commission data,²⁷⁵ 761 companies reported that they were engaged in the provision of payphone services. Of these 761 companies, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees.²⁷⁶ Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

111 *Prepaid Calling Card Providers* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees.²⁷⁷ According to

²⁶⁸ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

²⁶⁹ *Trends in Telephone Service* at Table 5.3.

²⁷⁰ *Id.*

²⁷¹ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

²⁷² *Trends in Telephone Service* at Table 5.3.

²⁷³ *Id.*

²⁷⁴ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002).

²⁷⁵ *Trends in Telephone Service* at Table 5.3.

²⁷⁶ *Id.*

²⁷⁷ 13 C.F.R. § 121.201, NAICS code 513330 (changed to 517310 in October 2002).

Commission data,²⁷⁸ 37 companies reported that they were engaged in the provision of prepaid calling cards. Of these 37 companies, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees.²⁷⁹ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

112 *Other Toll Carriers* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to “Other Toll Carriers.” This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸⁰ According to Commission’s data,²⁸¹ 92 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these 92 companies, an estimated 82 have 1,500 or fewer employees and ten have more than 1,500 employees.²⁸² Consequently, the Commission estimates that most “Other Toll Carriers” are small entities that may be affected by the rules and policies adopted herein.

113 *Paging* The SBA has developed a small business size standard for Paging, which consists of all such firms having 1,500 or fewer employees.²⁸³ According to Census Bureau data for 1997, in this category there was a total of 1,320 firms that operated for the entire year.²⁸⁴ Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional seventeen firms had employment of 1,000 employees or more.²⁸⁵ Thus, under this size standard, the majority of firms can be considered small.

114 *Cellular and Other Wireless Telecommunications* The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, which consists of all such firms having 1,500 or fewer employees.²⁸⁶ According to Census Bureau data for

²⁷⁸ *Trends in Telephone Service* at Table 5.3

²⁷⁹ *Id.*

²⁸⁰ 13 C.F.R. § 121.201, NAICS code 513310 (changed to 517110 in October 2002)

²⁸¹ *Trends in Telephone Service* at Table 5.3

²⁸² *Id.*

²⁸³ 13 C.F.R. § 121.201, NAICS code 517211 (changed from 513321 in October 2002)

²⁸⁴ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513321 (issued October 2000)

²⁸⁵ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is “Firms with 1,000 employees or more.”

²⁸⁶ 13 C.F.R. § 121.201, NAICS code 517212 (changed from 513322 in October 2002)

1997, in this category there was a total of 977 firms that operated for the entire year.²⁸⁷ Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.²⁸⁸ Thus, under this size standard, the majority of firms can be considered small.

115 *Broadband Personal Communications Service* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years.²⁸⁹ For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.²⁹⁰ These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA.²⁹¹ No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F.²⁹² On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Based on this information, the Commission concludes that the number of small broadband PCS licenses will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission’s auction rules. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

²⁸⁷ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 513322 (issued October 2000).

²⁸⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees, the largest category provided is “Firms with 1,000 employees or more.”

²⁸⁹ See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96-59, Report and Order, 61 FR 33859 (July 1, 1996), see also 47 C.F.R. § 24.720(b).

²⁹⁰ See *id.*

²⁹¹ See e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

²⁹² FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. January 14, 1997). See also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, WT Docket No. 97-82, Second Report and Order, 62 FR 55348 (Oct. 24, 1997).

116 *Narrowband Personal Communications Services* To date, two auctions of narrow band personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*.²⁹³ A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.²⁹⁴ In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission’s Rules. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission’s partitioning and disaggregation rules.

117 *220 MHz Radio Service – Phase I Licensees* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to “Cellular and Other Wireless Telecommunications” companies. This standard provides that such a company is small if it employs no more than 1,500 persons.²⁹⁵ According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.²⁹⁶ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of

²⁹³ *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, Docket No. ET 92-100, Docket No. PP 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 65 FR 35875 (June 6, 2000).

²⁹⁴ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

²⁹⁵ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

²⁹⁶ U.S. Census Bureau, 1997 *Economic Census, Subject Series Information*, “Employment Size of Firms Subject to Federal Income Tax – 1997,” Table 5, NAICS code 513322 (issued Oct. 2000).

1,000 employees or more.²⁹⁷ If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard

118 *220 MHz Radio Service – Phase II Licensees* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.²⁹⁸ This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.²⁹⁹ A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.³⁰⁰ Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.³⁰¹ In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.³⁰²

119 *800 MHz and 900 MHz Specialized Mobile Radio Licenses* The Commission awards “small entity” and “very small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar years, or that had revenues of no more than \$3 million in each of the previous calendar years.³⁰³ The SBA has approved these size standards.³⁰⁴ The Commission awards “small entity” and “very small entity” bidding credits in

²⁹⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees, the largest category provided is “Firms with 1,000 employees or more.”

²⁹⁸ *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70, paras. 291-95 (1997) (*220 MHz Third Report and Order*).

²⁹⁹ *Id.* at 11068-70, para. 291.

³⁰⁰ See letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

³⁰¹ See generally Public Notice, “220 MHz Service Auction Closes,” 14 FCC Rcd 605 (1998).

³⁰² Public Notice, “Phase II 220 MHz Service Spectrum Auction Closes,” 14 FCC Rcd 11218 (1999).

³⁰³ 47 C.F.R. § 90.814(b)(1).

³⁰⁴ See Letter from Aida Alvarez, Administration, Small Business Administration to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 27, 1997). See Letter from Aida (continued)

auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz bands to firms that had revenues of no more than \$40 million in each of the three previous calendar years, or that had revenues of no more than \$15 million in each of the previous calendar years.³⁰⁵ These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. We note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

120 *Private and Common Carrier Paging* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³⁰⁶ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these size standards.³⁰⁷ An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.³⁰⁸ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific

(Continued from previous page) _____

Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission (Aug. 10, 1999)

³⁰⁵ 47 C.F.R. § 90.814(b)(1). A request for approval of 800 MHz standards was sent to the SBA on May 13, 1999. The matter remains pending.

³⁰⁶ *220 MHz Third Report and Order*, 12 FCC Rcd at 11068-70, paras. 291-295, 62 FR 16004 at paras. 291-295 (1997).

³⁰⁷ See Letter from Aida Alvarez, Administrator, Small Business Administration to Thomas Sugrue, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, *Federal Communications Commission* (June 4, 1999).

³⁰⁸ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085, para. 98 (1999).

licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.³⁰⁹ Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.³¹⁰

121 *700 MHz Guard Band Licensees* In the 700 MHz Guard Band Order, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.³¹¹ A “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.³¹² Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.³¹³

122 *Rural Radiotelephone Service* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.³¹⁴ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).³¹⁵ The Commission uses the SBA’s small business size standard applicable to “Cellular and Other Wireless Telecommunications,” *i.e.*, an entity employing no more than 1,500 persons.³¹⁶ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

³⁰⁹ *Trends in Telephone Service* at Table 5.3.

³¹⁰ *Id.* The SBA size standard is that of Paging, 13 C.F.R. § 121.201, NAICS code 517211.

³¹¹ See *Service Rules for the 746-764 MHz Bands, and Revisions to part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, 5344, para. 108 (2000).

³¹² See generally Public Notice, “220 MHz Service Auction Closes,” Report No. WT 98-36 (Wireless Telecommunications Bureau, Oct. 23, 1998).

³¹³ Public Notice, “700 MHz Guard Band Auction Closes,” DA 01-478 (rel. Feb. 22, 2001).

³¹⁴ The service is defined in § 22.99 of the Commission’s Rules, 47 C.F.R. § 22.99.

³¹⁵ BETRS is defined in §§ 22.757 and 22.759 of the Commission’s Rules, 47 C.F.R. §§ 22.757 and 22.759.

³¹⁶ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

123 *Air-Ground Radiotelephone Service* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.³¹⁷ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons.³¹⁸ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

124 *Aviation and Marine Radio Services* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.³¹⁹ Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157 1875-157 4500 MHz (ship transmit) and 161 775-162 0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million.³²⁰ There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

125 *Fixed Microwave Services* Fixed microwave services include common carrier,³²¹ private operational-fixed,³²² and broadcast auxiliary radio services.³²³ At present, there are

³¹⁷ The service is defined in § 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

³¹⁸ 13 C.F.R. § 121.201, NAICS codes 513322 (changed to 517212 in October 2002).

³¹⁹ *Id.* § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

³²⁰ *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

³²¹ See 47 C.F.R. §§ 101 *et seq.* (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

³²² Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. See 47 C.F.R. Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

³²³ Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 C.F.R. Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities (continued)

approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees.³²⁴ The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

126 *Offshore Radiotelephone Service* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.³²⁵ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.³²⁶ Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.³²⁷

127 *Wireless Communications Services* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards.³²⁸ The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

(Continued from previous page)

Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

³²⁴ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

³²⁵ This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 C.F.R. §§ 22.1001-22.1037.

³²⁶ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

³²⁷ *Id.*

³²⁸ See Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

128 *39 GHz Service* The Commission created a special small business size standard for 39 GHz licenses – an entity that has average gross revenues of \$40 million or less in the three previous calendar years.³²⁹ An additional size standard for “very small business” is an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³³⁰ The SBA has approved these small business size standards.³³¹ The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

129 *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as “wireless cable,” transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).³³² In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.³³³ The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating \$12.5 million or less in annual receipts.³³⁴ According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year.³³⁵ Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more but less than \$25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions.

³²⁹ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, *Report and Order*, 63 FR 6079 (Feb. 6, 1998).

³³⁰ *Id.*

³³¹ See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

³³² *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, MM Docket No. 94-131 and PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589, 9593 para. 7 (1995).

³³³ 47 C.F.R. § 21.961(b)(1).

³³⁴ 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

³³⁵ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 513220 (issued October 2000).

Educational institutions are included in this analysis as small entities.³³⁶ Thus, we tentatively conclude that at least 1,932 licensees are small businesses

130 *Local Multipoint Distribution Service* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.³³⁷ The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.³³⁸ An additional small business size standard for “very small business” was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.³³⁹ The SBA has approved these small business size standards in the context of LMDS auctions.³⁴⁰ There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses, there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

131 *218-219 MHz Service* The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.³⁴¹ In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million

³³⁶ In addition, the term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

³³⁷ See *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, CC Docket No. 92-297, Second Report and Order, 12 FCC Rcd 12545 (1997).

³³⁸ *Id.*

³³⁹ See *id.*

³⁴⁰ See Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

³⁴¹ *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 59 FR 24947 (May 13, 1994).

for the preceding three years.³⁴² A “very small business” is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.³⁴³ The SBA has approved these size standards.³⁴⁴ We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218-219 MHz spectrum.

132 *24 GHz – Incumbent Licensees* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of “Cellular and Other Wireless Telecommunications” companies. This category provides that such a company is small if it employs no more than 1,500 persons.³⁴⁵ According to Census Bureau data for 1997, there were 977 firms in this category that operated for the entire year.³⁴⁶ Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.³⁴⁷ Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent³⁴⁸ and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

133 *24 GHz – Future Licensees* With respect to new applicants in the 24 GHz band, the small business size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million.³⁴⁹ “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for

³⁴² *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (Nov. 3, 1999).

³⁴³ *Id.*

³⁴⁴ See Letter to Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration (Jan. 6, 1998).

³⁴⁵ 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

³⁴⁶ U.S. Census Bureau, 1997 Economic Census, Subject Series Information, “Employment Size of Firms Subject to Federal Income Tax – 1997,” Table 5, NAICS code 513322 (issued Oct. 2000).

³⁴⁷ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is “Firms with 1,000 employees or more.”

³⁴⁸ Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

³⁴⁹ *Amendments to Parts 1, 2, 87 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000), see also 47 C.F.R. § 101.538(a)(2).

the preceding three years.³⁵⁰ The SBA has approved these small business size standards.³⁵¹ These size standards will apply to the future auction, if held.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

134 The Order permits rate-of-return carriers acquiring price cap lines to return those lines to rate-of-return regulation without seeking a waiver. As a result, the administrative costs of seeking a waiver are avoided.³⁵²

135 The Order also permits rate-of-return carriers to deaverage geographically their rates for transport and special access services within a study area.³⁵³ While rate-of-return carriers must define the scope of zones, the requirement that they be approved in advance is eliminated.³⁵⁴ The carrier is now required to demonstrate that each zone, except the highest-cost zone, accounts for at least 15 percent of its revenues from services in the study area,³⁵⁵ and must demonstrate that rates reflect cost characteristics associated with the selected zones.³⁵⁶

136 Merging LTS into ICLS will promote administrative simplicity by eliminating a duplicative support mechanism without affecting the amount of universal service support received by small entities or negatively affecting carriers that choose to participate in the NECA common line pool.³⁵⁷

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

137 The Commission has sought to minimize significant economic impacts on small entities, including small telephone companies, in revising the access and universal service rules in this Order. The Commission's approach is tailored to the specific challenges faced by small local telephone companies, many of which serve rural and high-cost areas.

³⁵⁰ *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd at 16967, *see also* 47 C.F.R. § 101.538(a)(1).

³⁵¹ *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA (July 28, 2000).

³⁵² *See supra* § III A 2.

³⁵³ *See supra* § III B 2 a.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *See supra* § III C 2.

138 The Commission considered whether to eliminate completely the “all-or-nothing” rule, but decided only to carve out an exception for rate-of-return carriers that wish to return the acquired price cap lines to rate-of-return regulation. This eliminates the need for a waiver before such acquisitions can be returned to rate-of-return regulation, thereby reducing transaction costs and uncertainty for small, typically rural carriers seeking to acquire lines from price cap carriers. We continue to explore further modifications to the all-or-nothing rule within the larger context of incentive regulation for rate-of-return carriers in the *Second Further Notice*.

139 The Order permits rate-of-return carriers to geographically deaverage their rates for special access and transport services. The Commission gives rate-of-return carriers significant latitude to define pricing zones as they wish, subject to the limitation that each zone, except the highest-cost zone, must account for at least 15 percent of the rate-of-return carrier’s transport and special access revenues in the study area. This requirement ensures that any lower rates resulting from deaveraging are enjoyed by a range of customers, rather than being focused on only a few customers in a way that might evade our prohibition on contract pricing by rate-of-return carriers. The Order continues to require rate-of-return carriers to have a tariffed cross-connect element in order to geographically deaverage rates, thereby ensuring that transport competitors, including small entities, can interconnect with the rate-of-return carrier’s access network when it deaverages its special access and transport rates. In reaching this decision, the Commission considered and rejected claims by IXC’s that immediate geographic deaveraging would lead to predatory pricing by rate-of-return carriers and that further deaveraging should result only in price decreases.³⁵⁸ The Order determines that permitting rate-of-return carriers to deaverage the rates for special access and transport services enhances the efficiency of the market for those services by allowing prices to be tailored more easily and accurately to reflect costs and, therefore, facilitates competition in both higher and lower cost areas. Rate-of-return carriers must provide cost support establishing that the deaveraged rates are cost-based, thereby ensuring that smaller, more vulnerable carriers are safeguarded from any such predatory pricing.

140 The Order also permits geographic deaveraging of rates for special access and transport services within the NECA pooling process. As a result, smaller rate-of-return carriers may be able to realize increased pricing flexibility through the NECA traffic-sensitive pool. Such increased pricing flexibility might not have been possible if they were required to file their own tariffs.

141 The Order declines to relax the existing competitive triggers for volume and term discounts for transport services, as many rate-of-return carriers urged. The Commission was concerned that the premature grant of such discount authority would permit a rate-of-return carrier to lock up large customers by offering them volume and term discounts at or below cost.³⁵⁹ Such discounts would potentially foreclose competition for smaller customers because large customers may create the inducement for potential competitors to invest in facilities which, once put into service, can be used to serve adjacent smaller customers.³⁶⁰ Accordingly, the

³⁵⁸ See *supra* § III B 2 a.

³⁵⁹ See *supra* § III B 2 b.

³⁶⁰ *Id.*

Commission refuses to adopt less restrictive competitive triggers that would have more readily facilitated volume and term discounts, because such new triggers would not have ensured the presence of a competitor that would operate to prevent harm to smaller entities.

142. The Order also declines to permit rate-of-return carriers to offer services pursuant to individual customer contracts, as many rate-of-return carriers urged. Such an ability to combine various elements or parts of elements, the Commission notes, would allow rate-of-return carriers to set non-cost-based prices in order to prevent entrants from providing service to the largest customers in their service areas, thereby precluding further competition for smaller customers in their service areas as well.³⁶¹

143. The Order merges LTS into the ICLS mechanism. This will simplify the administration of common line support measures, while ensuring both that no individual carrier will fail to recover its common line revenue requirement,³⁶² and that overall support will not be reduced as existing rules operate to automatically increase ICLS by an amount to match any LTS reduction.³⁶³ Accordingly, the concerns of small entities over the elimination of LTS are fully addressed by the new ICLS mechanism. In reaching this conclusion, the Commission considered and rejected NECA's argument that the elimination of LTS will destabilize the NECA pool. The Order concludes that although many, if not most, carriers will continue participating in the common line pool, the benefits of pooling do not warrant the continued use of universal service support as a way to induce carriers to participate in the pool if they are not otherwise inclined to do so.

6. Report to Congress

144. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.³⁶⁴ In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the Federal Register.³⁶⁵

D. Initial Regulatory Flexibility Act Analysis

145. The Regulatory Flexibility Act of 1980, as amended (RFA),³⁶⁶ requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making

³⁶¹ See *supra* § III B 2 c.

³⁶² See *supra* § III C 2.

³⁶³ *Id.*

³⁶⁴ See 5 U.S.C. § 801(a)(1)(A).

³⁶⁵ See 5 U.S.C. § 604(b).

³⁶⁶ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities”³⁶⁷ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³⁶⁸ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.³⁶⁹ A “small business concern” is one which (1) is independently owned and operated; (2) is not dominant in its field of operation, and (3) satisfies any additional criteria established by the SBA.³⁷⁰

146 As required by the RFA, the Commission has prepared this IRFA of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided in paragraph 158 of the item

1. Need for, and Objectives of, the Proposed Rules

147 The Commission continues to explore means of providing incentives for smaller telephone companies to become more efficient and innovative in ways that benefit both rate-of-return carriers and their customers. The *Second Further Notice* seeks additional comment on two alternative incentive regulation proposals for all rate-of-return carriers, and on the closely related all-or-nothing rule

148. The alternative incentive regulation plans were filed by CenturyTel (the CenturyTel Plan) and by ALLTEL, Madison River and TDS (the Rate-of-Return Carrier Tariff Option).³⁷¹ The CenturyTel Plan proposes to lower traffic-sensitive charges, according to participation on a study area-by-study area basis, to target rates based on specific average traffic-sensitive target rates determined by line density. The CenturyTel Plan would apply an X-Factor equal to GDP-PI. The CenturyTel Plan would convert universal service support to per-line amounts, with ICLS and LSS being frozen for the five-year duration of the proposed plan and high-cost loop support being frozen subject to adjustment for GDP-CPI. Finally, CenturyTel proposes that carriers should be allowed to take certain study areas out of the NECA pools and into alternative regulation, while leaving other study areas in the pools, subject to rate-of-return regulation. The Rate-of-Return Carrier Tariff Option would allow all rate-of-return carriers (not

³⁶⁷ 5 U.S.C. § 605(b)

³⁶⁸ 5 U.S.C. § 601(6)

³⁶⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 5 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

³⁷⁰ 15 U.S.C. § 632

³⁷¹ See *supra* § IV A 2

just those serving 50,000 or fewer lines) to elect to adopt a revised section 61.39 approach under which they would file access tariffs every two years based on the previous two years' historical cost and demand data. The Rate-of-Return Carrier Tariff Option would provide a participating company with a per-line ICLS based on two years of historical data. Finally, both plans would make participation in the alternative regulation plan optional, and would allow election by study area.

149 The *Second Further Notice* tentatively concludes that any alternative regulation plan that the Commission may adopt should be optional on the part of the rate-of-return carrier, with participation through election on a study area basis³⁷². Additionally, such participation should be available only to holding company groups in which all non-average schedule companies file their own cost-based tariffs. Among the issues on which the *Second Further Notice* seeks comment are whether the two plans will produce rates that are just and reasonable and not unreasonably discriminatory for all entities, including small entities. The *Second Further Notice* also asks whether the CenturyTel Plan should contain a productivity factor other than GDP-PI, whether a G-factor should be used as an alternative approach to an X-factor, and whether it should be based on historical data or on projections for the next tariff period. In addition, the *Second Further Notice* asks about the effect each plan will have on rate-of-return carriers' investment and maintenance of their exchange access facilities, whether service quality will be degraded, and whether the universal service fund will be increased.

150 The *Second Further Notice* also tentatively concludes that existing accounting and regulatory processes should equip parties and the Commission to detect cost-shifting by the rate-of-return carriers that file cost-based access tariffs. Nonetheless, the Commission asks commenters to identify the ways that a rate-of-return carrier could shift costs from a study area electing an alternative regulation plan to a study area subject to rate-of-return regulation. The Commission also asks commenters to identify what additional reporting or regulatory procedures would help detect and prevent such cost shifting. The *Second Further Notice* tentatively concludes that the rules should be amended to indicate that new carriers or carrier study areas may not elect the CALLS³⁷³ plan because it was not designed to be open to new carriers or study areas. Finally, it also tentatively concludes that the option to elect alternative regulation on a study area basis, if adopted, should also be available when carriers under different regulatory plans come together by merger or acquisition.

2. Legal Basis

151 This rulemaking action is supported by sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended.³⁷⁴

³⁷² See *supra* § IV A.3

³⁷³ See *supra* para 72

³⁷⁴ 47 U.S.C. §§ 154(i), 154(j), 201-205, 254 and 403

3. Description and Estimate of the Number of Small Entities to Which the Notice will Apply

152 The Commission's action in this *Second Further Notice* could affect a wide variety of entities. This IRFA potentially will affect the same entities discussed above in the FRFA, and we incorporate the descriptions of those entities by reference.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

153 The *Second Further Notice* explores options for developing an alternative regulatory structure that would be available to those rate-of-return carriers electing it. It considers the widely varying operating circumstances of rate-of-return carriers, the implications of competitive and intrastate regulatory conditions on the options available, and the need to facilitate and ensure the deployment of advanced services in rural America. If adopted, alternative regulation may require additional recordkeeping. For example, during CenturyTel's five-year plan, line density averages would have to be reported in order to assess applicable ATS target rates.³⁷⁵ Furthermore, under the Rate-of-Return Carrier Tariff Option, electing rate-of-return carriers would file tariffs for a two-year period, with rates based on historical costs and demand.³⁷⁶ The *Second Further Notice* also addresses the continued need for the Commission's all-or-nothing rule, seeking comment on whether repeal or modification of the all-or-nothing rule could involve additional reporting or regulatory procedures to prevent cost shifting.³⁷⁷

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

154 The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.³⁷⁸

155. The two alternative incentive regulation proposals in the *Second Further Notice* could have varying positive or negative impacts on small rate-of-return carriers. The proposals involve elective options, so that a small entity should be able to assess the potential impacts as part of its decision-making process. Nonetheless, public comments are welcomed on any modifications to the proposals contained in the *Second Further Notice* that would reduce

³⁷⁵ See *supra* § V.A.2.

³⁷⁶ See *id.*

³⁷⁷ See *supra* § IV.A.3.

³⁷⁸ 5 U.S.C. § 603(c)(1)-(c)(4).

potential adverse impacts on small entities. Specifically, suggestions are sought on different compliance or reporting requirements that would take into account the resources of small entities, and clarification, consolidation, or simplification of compliance and reporting requirements for small entities that would be subject to the rules. What are the relative merits between applying an X-factor, based on GDP-PI or some other productivity factor, and a G-factor, based on growth, as they relate to small entities under the CenturyTel Plan? How can we ensure that adequate investment and service quality levels are maintained? How would the adoption of an incentive regulation plan affect small carriers, and how would a low-end adjustment affect such plan? How would the adoption of either alternative regulation plan affect universal service? If we should repeal or modify our all-or-nothing rule, how can we prevent the danger of cost shifting for small carriers? How would the proposals impact NECA pooling from the perspective of small carriers? Comments should be supported by specific economic analysis.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

156 None

7. Report to the Small Business Administration

157 The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).³⁷⁹ In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³⁸⁰

E. Filing of Comments and Reply Comments

158 Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 30 days and reply comments on or before 45 days of publication of this *Second Further Notice* in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.³⁸¹ Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/cgb/ecfs>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to <ecfs@fcc.gov>, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

³⁷⁹ See 5 U.S.C. § 603(a).

³⁸⁰ *Id.*

³⁸¹ See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at <<http://www.fcc.gov/e-file/email.html>>

159 Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number

160 Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002

- The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission

161 Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, S.W., Washington, DC 20554 (telephone 202-863-2893, facsimile 202-863-2898) or via e-mail at <qualexint@aol.com>. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street, S.W., Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, S.W., Washington, DC 20554, and will be placed on the Commission's Internet site. For further information, contact Douglas Slotten at (202) 418-1572, or Ted Burmeister at (202) 418-7389.

162 Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on the *Second Further Notice*, i.e., on or before 30 days after publication of the *Second Further Notice* in the Federal Register. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before 60 days after publication of the *Second Further Notice* in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, or via the Internet to <jbherman@fcc.gov>, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503, or via the Internet to <JThornto@omb.eop.gov>.

163 Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau, at (202) 418-0531, TTY (202) 418-7365, or at <fcc504@fcc.gov>.

VI. ORDERING CLAUSES

164 Accordingly, IT IS ORDERED, that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this Report and Order IS ADOPTED

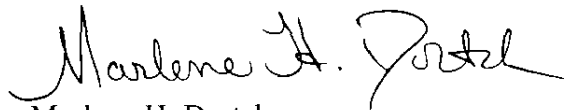
165 IT IS FURTHER ORDERED that Parts 54, 61, and 69 of the Commission's rules, 47 C.F.R. Parts 54, 61, and 69, ARE AMENDED as set forth in Appendix A hereto, effective 30 days after their publication in the Federal Register. The collections of information contained within are contingent upon approval by the Office of Management and Budget.

166 IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

167 IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 201-205, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 201-205, 254, and 403, this *Second Further Notice of Proposed Rulemaking* IS ADOPTED.

168 IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary